

The House Committee on Judiciary Non-civil offers the following substitute to SB 59:

A BILL TO BE ENTITLED  
AN ACT

To amend Part 4 of Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to Internet and electronic mail fraud, so as to provide definitions; to prohibit a person from using certain computers to relay or retransmit commercial e-mail messages with the intent to deceive or mislead recipients or an e-mail service provider under certain circumstances; to prohibit a person from materially falsifying header information in commercial e-mail messages under certain circumstances; to prohibit a person from registering for e-mail accounts or domain names under certain circumstances; to provide for criminal and civil penalties; to provide for forfeiture; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Part 4 of Article 6 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to Internet and electronic mail fraud, is amended by adding a new Code section to read as follows:

"16-9-109.2.

(a) As used in this Code section, the term:

(1) 'Commercial e-mail message' means an e-mail message sent primarily for the purpose of commercial advertisement or promotion of:

(A) A commercial product;

(B) A commercial service;

(C) The content of an Internet website; or

(D) A website operated for a commercial purpose.

(2) 'Domain name' means any alphanumeric designation that is registered with or assigned by a domain name registrar, domain name registry, or other domain name registration authority as part of an e-mail address on the Internet.

(3) 'E-mail service provider' means any person, including an Internet service provider, that is an intermediary in sending and receiving e-mail and that provides to the public the ability to send or receive e-mail to or from an e-mail account or on-line user account.

(4) 'Financial institution' means any financial institution of the type supervised under Chapter 1 of Title 7, the 'Financial Institutions Code of Georgia,' whether or not state chartered.

(5) 'Header information' means the source, destination, and routing information attached to an e-mail message, including the originating domain name and originating e-mails, and any other information that appears in the line identifying or purporting to identify a person initiating the message, and technical information that authenticates the sender of an e-mail message for network security or network management purposes.

(6) 'Initiate,' when relating to a commercial e-mail message, means to originate or transmit the commercial e-mail message or to procure the origination or transmission of the commercial e-mail message and does not include actions that constitute routine conveyances of such commercial e-mail message.

(7) 'Internet protocol address' means the string of numbers by which a location on the Internet is identified by routers or other computers connected to the Internet.

(8) 'Materially falsified' means altered or concealed in a manner that would impair the ability of one of the following to identify, locate, or respond to a person who initiated an e-mail message or to investigate an alleged violation of this Code section:

(A) A recipient of the message;

(B) An Internet access service processing the message on behalf of a recipient;

(C) A person alleging a violation of this Code section; or

(D) A law enforcement agency.

(9) 'Multiple' means:

(A) More than ten commercial e-mail messages during a 24 hour period;

(B) More than 100 commercial e-mail messages during a 30 day period; or

(C) More than 1,000 commercial e-mail messages during a one-year period.

(10) 'Protected computer' means any computer that, at the time of an alleged violation of any provision of this Code section involving that computer, was located within the geographic boundaries of the State of Georgia.

(11) 'Routine conveyance' means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an e-mail message for which another person has identified the recipients or provided the recipients' addresses.

(b) No person shall conspire to or knowingly:

(1) Use a protected computer of another to relay or retransmit multiple commercial e-mail messages with the intent to deceive or mislead recipients of an e-mail service provider as to the origins of such commercial e-mail messages;

(2) Materially falsify header information in multiple commercial e-mail messages and intentionally initiate the transmission of such commercial e-mail messages;

(3) Register, using information that materially falsifies the identity of the actual registrant, for 15 or more e-mail accounts or on-line user accounts of two or more domain names and intentionally initiate the transmission of multiple commercial e-mail messages from one or any combination of such accounts or domain names;

(4) Falsely represent the right to use five or more Internet protocol addresses and intentionally initiate the transmission of multiple commercial e-mail messages from such Internet protocol addresses;

(5) Access a protected computer of another without authorization and intentionally initiate the transmission of multiple commercial e-mail messages from or through such protected computer;

(6) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting addresses to which a commercial e-mail message was transmitted, knowing that:

(A) The e-mail addresses of the recipients were obtained using an automated means from an Internet website or proprietary on-line service operated by another person; and

(B) The website or on-line service included, at the time the addresses were obtained, a notice stating that the operator of the website or on-line service will not transfer addresses maintained by the website or on-line service to any other party for the purposes of initiating or enabling others to initiate e-mail messages; or

(7) Violate paragraph (1), (2), (3), (4), or (5) of this subsection by providing or selecting e-mail addresses of recipients obtained using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

(c)(1) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this Code section shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed three years or a fine not to exceed \$5,000.00, or both.

(2) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this Code section involving the transmission of more than 250 commercial e-mail messages during a 24 hour period, 2,500 commercial e-mail messages during any 30 day period, or 25,000 commercial e-mail messages during any one-year period shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.

(3) A person who violates paragraph (3) or (4) of subsection (b) of this Code section involving 20 or more e-mail accounts or ten or more domain names and intentionally initiates the transmission of multiple commercial e-mail messages from such accounts or using such domain names shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.

(4) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this Code section in a manner that causes a loss of \$500.00 or more during any one-year period shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.

(5) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this Code section in concert with three or more other persons as the leader or organizer of the action that constitutes the violation shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed five years or a fine not to exceed \$10,000.00, or both.

(6) A person who violates paragraph (1), (2), (3), (4), or (5) of subsection (b) of this Code section in furtherance of a felony, or who has previously been convicted of an offense under the laws of this state, another state, or any federal law, involving the transmission of multiple commercial e-mail messages shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed ten years or a fine not to exceed \$25,000.00, or both.

(7) A person who violates paragraph (6) or (7) of subsection (b) of this Code section shall be guilty of a felony and upon conviction shall be punished by imprisonment for a period not to exceed one year or a fine not to exceed \$5,000.00, or both.

(d) The Attorney General, a district attorney, or an assistant district attorney may enforce criminal violations of this Code section.

(e)(1) In addition to the criminal penalties authorized by this Code section, the following shall be subject to forfeiture to the state:

(A) Any moneys and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of such defendant's violation of this Code section; and

(B) All computer equipment, computer software, and personal property used in connection with a violation of this Code section known by the owner of such computer equipment, computer software, or personal property to have been used in violation of this Code section.

(2) The Attorney General, a district attorney, or an assistant district attorney may commence forfeiture proceedings under this Code section. Forfeiture shall be had by the

same procedure set forth in Code Section 16-14-7. A forfeiture proceeding pursuant to this Code section may be commenced up until three years after the conduct in violation of this Code section terminates.

(3) In addition to forfeiture, the Attorney General, a district attorney, or an assistant district attorney shall be authorized in the forfeiture complaint to seek a civil penalty as follows:

(A) Up to \$25,000.00 per day of violation; or

(B) Not less than \$2.00 nor more than \$8.00 per commercial e-mail message sent in violation of this Code section;

provided, however, that the civil penalty, excluding the forfeiture amount, shall not exceed \$2 million.

(4) The Attorney General, a district attorney, or an assistant district attorney may seek injunctive relief in a civil action to prohibit a person who has engaged in or is engaged in a violation of this Code section from engaging in further violations.

(f) Nothing in this Code section shall be construed to have any effect on the lawfulness of the adoption, implementation, or enforcement by an e-mail service provider of a policy of declining to transmit, route, relay, handle, or store certain types of e-mail messages under any other provision of law."

## **SECTION 2.**

All laws and parts of laws in conflict with this Act are repealed.